

## IN THE UNITED STATES COURT OF FEDERAL CLAIMS

## BID PROTEST

|                              |   |                           |
|------------------------------|---|---------------------------|
| _____                        | ) |                           |
| BLUE ORIGIN FEDERATION, LLC, | ) |                           |
|                              | ) |                           |
| <i>Plaintiff,</i>            | ) |                           |
|                              | ) | Case No. <u>21-1695 C</u> |
| v.                           | ) |                           |
|                              | ) |                           |
| UNITED STATES OF AMERICA,    | ) |                           |
|                              | ) |                           |
| <i>Defendant.</i>            | ) |                           |
| _____                        | ) |                           |

**MOTION FOR LEAVE TO FILE A COMPLAINT UNDER SEAL**

Plaintiff Blue Origin Federation, LLC (“Blue Origin”), by its undersigned counsel, respectfully moves this for Court Leave to File a Complaint Under Seal. The Complaint is Blue Origin’s initial pleading before the Court in this matter, and it is intended to initiate a post-award bid protest action challenging the actions of the Defendant, the United States, acting through the National Aeronautics and Space Administration (“NASA”). Blue Origin challenges NASA’s award of Human Landing System Option A (“HLS Option A”) under Broad Agency Announcement (“BAA”) No. NNH19ZCQ001K to Space Exploration Technologies Corp. (“SpaceX”). Blue Origin also challenges its nonselection for award of an HLS Option A contract. More specifically, this bid protest challenges NASA’s unlawful and improper evaluation of proposals submitted under the HLS Option A BAA. The HLS Option A BAA was for a demonstration mission for a human landing system for lunar exploration. NASA selected SpaceX for the single HLS Option A award on April 16, 2021.

NASA’s improper award of the HLS Option A contract to SpaceX was the subject of bid protests filed on April 26, 2021 at the Government Accountability Office (“GAO”) by Blue Origin

and another offeror, Dynetics, Inc.—A Leidos Company (B-419783, B-419783.2) along with subsequently filed supplemental protests (B-419783.3 and B-4019783.4). During the proceedings before GAO, the GAO issued Protective Orders because the protests involved access to the Agency’s source selection sensitive information, as well as the proprietary and business confidential information of both Blue Origin and SpaceX, as well the other protester Dynetics.

Blue Origin anticipates that the current proceedings before the Court will require examination of the same information presented to GAO, and additional sensitive information in the Administrative Record. Paragraph 8 of the GAO Protective Order additionally provides that “[p]rotected material obtained under this protective order may be used . . . in a bid protest filed with the United States Court of Federal Claims, without GAO’s prior authorization, provided that the information is filed under seal with the Court, that the Court is informed of GAO’s protective order, and that the Court is requested to issue its own protective order to cover the protected material.” GAO Protective Order, EPDS Docket 3, at ¶ 8. The GAO’s order further states that “[u]se of material protected under the GAO protective order will be governed by the protective order issued by the Court.” *Id.*

Blue Origin will promptly request that the Court issue its own Protective Order to cover the protected material in this action.

Blue Origin’s Complaint contains protected material subject to GAO’s protective order and is appropriately filed under seal. Protected Material is indicated with gray highlighting. A proposed redacted version for public release of the Complaint is also supplied, in accordance with the Court’s rules.

WHEREFORE, Blue Origin respectfully requests that the Court grant its Motion for Leave to File a Complaint Under Seal.

Date: August 13, 2021

Respectfully submitted;



---

Scott E. Pickens  
Barnes & Thornburg LLP  
1717 Pennsylvania Avenue, N.W., Suite 500  
Washington, DC 20006-4623  
Phone: (202) 371-6349  
Email: ([Scott.Pickens@btlaw.com](mailto:Scott.Pickens@btlaw.com))

*Counsel of Record for Plaintiff  
Blue Origin Federation, LLC*

*Of Counsel*

Scott N. Godes  
Barnes & Thornburg LLP  
1717 Pennsylvania Avenue, N.W., Suite 500  
Washington, DC 20006-4623  
Phone: (202) 408-6928  
Email: ([Scott.Godes@btlaw.com](mailto:Scott.Godes@btlaw.com))

Matthew J. Michaels  
Barnes & Thornburg LLP  
1717 Pennsylvania Avenue, N.W., Suite 500  
Washington, DC 20006-4623  
Phone: (214) 566-3167  
Email: ([Matthew.Michaels@btlaw.com](mailto:Matthew.Michaels@btlaw.com))